

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
TIME WARNER TELECOM OF HAWAII, L.P.,)
dba OCEANIC COMMUNICATIONS)
For Expedited Approval of Financing,)
Or for Exemption.)

DOCKET NO. 05-0029

DECISION AND ORDER NO. 21746

Filed April 14, 2005
At 11 o'clock A.M.

Karen Higashi
Chief Clerk of the Commission

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

2005 APR 18 P 2:35

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ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

OF THE STATE OF HAWAII

In the Matter of the Application of)
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TIME WARNER TELECOM OF HAWAII, L.P.,)
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_____)

Docket No. 05-0029

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DECISION AND ORDER

By this Decision and Order, the commission:

(1) approves the issuance by TIME WARNER TELECOM, HOLDINGS, INC. ("TWTH") of a proposed debt financing (hereinafter, "Proposed Debt Financing"), described in TIME WARNER TELECOM OF HAWAII, L.P., dba OCEANIC COMMUNICATIONS' ("Oceanic") application, filed on February 2, 2005 ("Application"), to the extent that it results in Oceanic issuing other evidence of indebtedness, pursuant to Hawaii Revised Statutes ("HRS") § 269-17;

(2) approves the Proposed Debt Financing, as it relates to Oceanic's parent entity or its affiliates, pursuant to HRS § 269-7(a); and (3) waives the applicability of the filing requirements of Hawaii Administrative Rules ("HAR") § 6-61-101, to the extent that the Application does not meet all of the filing requirements.

I.

Introduction

In its Application, Oceanic requests an expedited order approving the issuance by TWTH of the Proposed Debt Financing. In the alternative, Oceanic requests that the commission exempt the Proposed Debt Financing from commission approval requirements, pursuant to HRS § 269-16.9(e). Moreover, to the extent that Oceanic did not satisfy the applicable application requirements, Applicant also requests a waiver of such requirements, pursuant to HRS § 269-16.9(e).

Oceanic served a copy of the Application on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). The Consumer Advocate, by its Statement of Position, filed on February 17, 2005 ("Statement of Position"), states that it neither objects to commission approval of the Proposed Debt Financing nor the commission's waiver of the applicable application requirements (i.e., HAR §§ 6-61-101), pursuant to HRS § 269-16.9(e), to the extent that Oceanic's Application does not meet all of these requirements, provided that Oceanic notify the commission and the Consumer Advocate in writing of the date(s) the Proposed Debt Financing has been consummated.¹

¹See, Consumer Advocate's Statement of Position at 7-8.

II.

Background

A.

Description of Oceanic and Related Entities

Oceanic is a limited partnership, organized under the laws of Delaware, and authorized to do business in the State of Hawaii ("State" or "Hawaii"). Oceanic is a provider of interstate and intrastate telecommunications services, including dedicated access (private line) and local exchange services.²

Oceanic's limited partner is TWTC, a publicly held Delaware corporation, who presently holds a ninety-nine per cent (99%) limited partnership interest in Oceanic. See, Application Exhibit A. TWTH, Oceanic's general partner, is itself wholly owned by TWTC.³

B.

Background and Proposed Financial Transaction

By Decision and Order No. 20880, filed on March 31, 2004, in Docket No. 04-0036 ("Decision and Order No. 20880"), the commission approved the issuance by TWTH of certain debt financing, including up to \$400 million in unsecured fixed rate Senior Notes at nine and twenty-five tenths per cent (9.25%) due

²In Hawaii, Oceanic is authorized to provide intrastate telecommunications services as a reseller and a facilities-based carrier. See Order No. 14842, filed on August 5, 1996, in Docket No. 95-0329.

³TWTH owns Time Warner Telecom Holdings II LLC and Time Warner Telecom General Partnership, who maintain a one (1) per cent general partnership interest in Oceanic.

in 2014 ("2014 Unsecured Notes"). In the first quarter of 2004, Oceanic represents that TWTH closed on the debt financing approved by Decision and Order No. 20880, and as part of the debt financing, offered \$200 million in the 2014 Unsecured Notes ("2004 Offering").⁴

Concerning the Proposed Debt Financing in this docket, Oceanic discloses that TWTH now intends to follow up on the 2004 Offering by an additional offering of the 2014 Unsecured Notes ("Additional Offering"), which is substantially identical to the 2014 Unsecured Notes used in the debt financing approved by Decision and Order No. 20880.⁵ In particular, Oceanic describes the Proposed Debt Financing as follows:

Although TWTH seeks to raise a minimum of \$200 million through the Additional Offering, it may raise \$400 million or more through the offering, depending upon market conditions and response. After all regulatory approvals are obtained, the Additional Offering will be guaranteed by the cash flows of state level operating subsidiaries (including Oceanic), but the guaranty will not encumber any of the subsidiaries' assets (which are already fully-pledged through the 2004 Offering).

All of the proceeds from the Additional Offering will be used to redeem a significant portion, or all, of TWTC's 9.75 percent Senior Notes that are due in 2008 (the "2008 Notes"). Thus, as the proceeds from the Additional Offering are being used to retire an equivalent amount of TWTC debt, there will be no change in TWTC's consolidated gross debt encumbering already-pledged assets.

⁴See, Application at 3-4.

⁵Similar to the 2004 Offering, the Additional Offering will consist of unsecured fixed rate senior notes at nine and twenty-five tenths per cent (9.25%). Further, the Additional Offering, when combined with the 2004 Offering, may result in the total issuance of up to \$600 million of the 2014 Unsecured Notes. *Id.*

()

The Additional Offering, however, will benefit TWTC by providing, inter alia, refinancing of a significant portion of TWTC's consolidated debt at a lower rate, extending the maturity on the debt by approximately 5.7 years, and providing ongoing interest savings of at \$1 million per annum (assuming the minimum Additional Offering of \$200 million). Accordingly, this transaction is intended to strengthen TWTC's overall financial stability, and place TWTC in a better financial position by improving the overall debt service to earnings before interest, taxes, depreciation, and amortization ("EBITDA") ratios, thus enhancing TWTC's (and thus ultimately Oceanic's) growth and ability to compete effectively in Hawaii and elsewhere.⁶

Oceanic further asserts that the Additional Offering will not have any material adverse impact upon its public utility operations in Hawaii, its customers or the public interest.⁷ Oceanic claims that the Additional Offering will enhance Oceanic's ability to compete in the local exchange service market by providing access to greater financial resources, and that these resources will allow Oceanic to respond to competitive pressures in the evolving telecommunications market and to continue to provide consumers with full facilities-based competitive choice.⁸

⁶See, Application at 4-5 (footnotes omitted) (quotes in original).

⁷Id. at 7-8.

⁸Id.

III.

Discussion

A.

HRS § 269-17

HRS § 269-17 requires a public utility to obtain the commission's approval before issuing stocks and stock certificates, bonds, notes, and other evidences of indebtedness payable at periods of more than twelve (12) months. This section permits the proceeds of such debt to be used only for the acquisition of property or for the construction, completion, extension, or improvement of or addition to the utility's facilities or service, or for the discharge or refunding of its obligations or reimbursement of funds expending for the foregoing described purposes. Pursuant to HRS § 269-17, we may approve the issuance of debt obligations if we find that such an issuance will not have a material adverse effect on the public utility's operations.

As previously stated and represented by Oceanic, Oceanic will be executing a guaranty for the Additional Offering, which will be payable at period of more than twelve (12) months from the issuance. Because the guaranty is considered to be "other evidence of indebtedness," approval of this transaction is required under HRS § 269-17.

HRS § 269-16.9(e) also permits the commission to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR

§ 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that such a waiver is in the public interest.

Upon review of the record in this docket, particularly Oceanic's representations, we find the following: (1) much of the telecommunications services currently provided by Oceanic are competitive; (2) that although the proceeds from the Proposed Debt Financing, described above, may be used for purposes not permitted by statute (i.e., working capital), the Proposed Debt Financing will have little, if any, effect on Oceanic's customers in Hawaii; (3) that the Proposed Debt Financing, described above, will not have a material adverse effect on Oceanic's public utility operations; (4) the Proposed Debt Financing is consistent with the public interest; and (5) that competition, in this instance, will serve the same purpose as public interest regulation

Based on the foregoing, we conclude that Oceanic's request for commission approval of the Proposed Debt Financing, described above, should be granted, pursuant to HRS § 269-17.⁹ Further, to the extent that the proceeds from the Proposed Debt Financing are used for purposes other than those permitted by HRS § 269-17, we conclude that the applicability of that section

⁹In light of our approval of the Proposed Debt Financing under HRS § 269-7(a), Oceanic's alternative request for a waiver of the requirements of HRS § 269-7(a) is deemed moot.

should be waived on the condition that such proceeds will be used for public utility purposes.

B.

HRS § 269-7

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review all proposed financial transactions of the parent entity or related subsidiaries of a regulated public utility under HRS § 269-7(a).¹⁰ Thus, the Proposed Debt Financing as it relates to Oceanic's parent entity or related subsidiaries (i.e., issuance of the Additional Offering by TWTH) falls under the purview of HRS § 269-7(a).

¹⁰Under HRS § 269-7(a), the commission will approve the proposed financial transactions if it is reasonable and consistent with the public interest. *In re ITC^DeltaCom Communications, Inc. et al.*, Docket No. 02-0345, Decision and Order No. 19874 (December 13, 2002); *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications et al.*, Docket No. 00-0354, Decision and Order No. 18220 (November 30, 2000); and *In re Time Warner Telecom of Hawaii, L.P., dba Oceanic Communications*, Docket No. 00-0047, Decision and Order No. 17662 (April 10, 2000). The transactions are reasonable and consistent with the public interest if they will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. See, *In re Ionex Telecommunications, Inc., et al.*, Docket No. 99-0223, Decision and Order No. 17369 (November 8, 1999). See also, *In re WilTel Communications, LLC*, Docket No. 03-0367, Decision and Order No. 20677 (November 25, 2003).

Upon review of the record in this docket, particularly Oceanic's representations, we find that the Proposed Debt Financing will not adversely affect Oceanic's fitness, willingness, and ability to provide intrastate telecommunications services in the State, as authorized by the commission. The Proposed Debt Financing is therefore reasonable and in the public interest. Accordingly, we conclude that the Proposed Debt Financing should be approved, pursuant to HRS § 269-7(a).

C.

Waiver of Other Filing Requirements

In an effort to meet Oceanic's expedited request and recognizing that time is of the essence to consummate the above-referenced Proposed Debt Financing, we find that waiver of the provisions of HAR § 6-61-101 (relating to application filing requirements to issue stock or other evidences of indebtedness, or to assume liabilities) will serve the same purpose as public interest regulation, particularly in light of our finding above that the Proposed Debt Financing is reasonable and consistent with the public interest.¹¹ Thus, the commission concludes that the applicable filing requirements of HAR § 6-61-101, to the extent that Oceanic's application does not meet all of the filing requirements should be waived. Nonetheless, the commission finds the Consumer Advocate's recommended condition, noted above, to be reasonable and will,

¹¹In *re Teligent Services, Inc. and TAC License Corp.*, Docket No. 01-0392, Decision and Order No. 19100 (December 10, 2001).

thus, adopt and incorporate such condition as part of the decision and order.

IV.

Orders

THE COMMISSION ORDERS:

1. The Proposed Debt Financing, described in the Application, to the extent that it results in Oceanic issuing other evidence of indebtedness, is approved, pursuant to HRS § 269-17. To the extent that the proceeds from this transaction are used for purposes other than those permitted under HRS § 269-17, the applicability of that section is waived on the condition that such proceeds will be used for public utility purposes.

2. The Proposed Debt Financing, described in the Application, as it relates to only transactions of Oceanic's parent entity or its affiliates, is approved, pursuant to HRS § 269-7(a).


3. To the extent that the Application does not contain all of the information required under either HAR § 6-61-101 filing requirements, the applicability of such provision is waived.

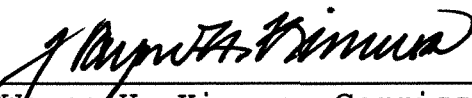
4. Oceanic shall notify the commission and the Consumer Advocate in writing of the date(s) the Proposed Debt Financing has been consummated. Applicants shall promptly comply with the conditions, noted above. Failure to promptly comply with these conditions may constitute cause to void this decision

and order, and may result in further regulatory action, as authorized by law.

DONE at Honolulu, Hawaii APR 14 2005.

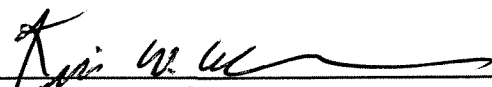
PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By 
Carlito P. Caliboso, Chairman

By 
Wayne H. Kimura, Commissioner

By 
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:


Kris N. Nakagawa
Commission Counsel

05-0029.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21746 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
DIVISION OF CONSUMER ADVOCACY
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DATED: APR 14 2005